IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1368 OF 2004

IN

SUIT NO.162 OF 2002

Canara Bank. .... Plaintiff.

vs.

Apple Finance Limited. ... Defendants.

Ms. Mona Bhide i/b. Dave & Girish & Co., for Plaintiff.

Mr. M.K.Ghelani i/b. Law Charter for Jay Sharada Realty Pvt.Ltd.-bidder.

Mr.M.S.Doctor i/b. Kanga & co. for Defendants.

Mr.Tated for Kantilal Exports-bidder.

Court Receiver present.

CORAM: D.K.DESHMUKH,J.

DATED: 6th May,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. By this notice of motion, the plaintiff prays for direction for acceptance of the offer made by one Sterlite Industries (India) Ltd in respect of the property which is described at Exhibit A to the plaint. In this notice of motion, an order was made on 15.4.2005. There was a report submitted by the Receiver. The offers that were received pursuant to the advertisement issued by the Receiver for the sale of the property were way below the reserved bid that is fixed by the Court. At that time the reserved bid was fixed at Rs.250 crores, it was fixed on the basis of valuation report submitted by the valuer. As the bids received were found to be much below the reserved bid, they were not accepted, and the Receiver was directed to issue fresh advertisement for calling bids. The Receiver was also directed by order dated 15.4.2005 to call for fresh valuation report as bids that were received by the Receiver were way below the valuation of the property given in the valuation report as also the reserved bid. The Receiver has now submitted the report stating therein that the highest bid that has been received by the Receiver is Rs.135 crores from M/s.M.Kantilal Exports. The Receiver has also called for valuation report. The valuation report is submitted by M/s.Parelkar & Dallas Architects. As per that report, the valuation is slightly above Rs.191 crores. Thus, the highest bid that is now received is also way below the valuation which is mentioned in the recent valuation report. The highest bid of Rs.135 crores is received after two advertisements. I permitted the bidders to increase their bid in the Court. The

highest bid is given in the Court by M/s.Jaysharda Realty Pvt. Ltd. who had also submitted their bid before the Receiver. The highest bid given by M/s.Jaysharda Relaty Pvt. Ltd. is of Rs.135 crores 50 lakhs. None of the bidders who are present are willing to better this bid. The learned Counsel appearing for the plaintiff submits that this bid has been received after two advertisements and therefore, though it is below the valuation of the property which is mentioned in the recent valuation report, this bid should be accepted. It is submitted that pursuant to a fresh advertisement bids in lower amount may be received. The learned Counsel for the defendants on the other hand submits that fresh advertisement should be issued and that the defendants are willing to deposit the expenses that may be necessary for fresh advertisement. According to the learned Counsel for defendants there are certain offerers who are willing to offer more price, if fresh advertisement is issued. It is, however, seen that it is also possible that if the highest bid received this time is rejected, and fresh bids are invited, the bids that may be received may be below the highest bid that has been now offered. As the plaintiff is requesting for acceptance of the highest bid, it is obvious that the plaintiff is not willing to spend any more money for advertisement.

2. Taking overall view of the matter therefore, in my opinion, the following order would meet the ends of justice :-

(i) The highest bid of Rs.135 crores 50 lakhs submitted by M/s.Jaysharda Realty Pvt. Ltd. is provisionally accepted.

(ii) The defendants are directed to deposit the amount that may be necessary for issuing fresh advertisement within a period of two weeks from the date on which he receives communication from the Receiver intimating the amount that is necessary for re-advertisement.

(iii) In case, the defendants deposit the expenses within the aforesaid period, the Receiver shall issue fresh advertisement inviting bids for the property in accordance with the settled procedure.

(iv) After bids are received, in case the bids received pursuant to fresh advertisement are above the highest bid of Rs.135 crores 50 lakhs given in the Court by M/s.Jaysharda Realty Pvt. Ltd., the Receiver shall put in a report to the Court and seeks further orders.

(v) If the bids received are below the highest bid of Rs.135 crores 50 lakhs, then the Receiver shall finalise the bid submitted by M/s.Jaysharda Realty Pvt. Ltd. and proceeds further. In that event, it will not be necessary for the Receiver to come back to the Court.

(vi) In case the defendants fail to deposit the amount necessary for re-advertisement within the aforesaid period, the Receiver shall accept the highest bid submitted by M/s.Jaysharda Realty Pvt. Ltd. and proceed as directed above.

The learned Counsel appearing for the highest bidder M/s.Jaysharda Realty Pvt.Ltd. states that the draft in the amount of Rs.1 crore (Rupees One Crore only) would be deposited during the course of the day and that the balance amount as per the terms and conditions shall be deposited, in case their offer is finally accepted.

Notice of Motion disposed of.